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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,518	07/18/2003	Minghua Chen	AA598M	4140

27752 7590 10/12/2006

THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
WINTON HILL BUSINESS CENTER - BOX 161
6110 CENTER HILL AVENUE
CINCINNATI, OH 45224

EXAMINER

VENKAT, JYOTHSNA A

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 10/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/622,518	CHEN ET AL.	
	Examiner	Art Unit	
	JYOTHSNA A. VENKAT Ph. D	1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>12/22/03</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Receipt is acknowledged of IDS filed on 12/12/03. Claims 1-13 are pending in the application and the status of the application is as follows:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of EP 0063875 ('875) and U.S. Patent 5,747,022 ('022) and JP abstract 242509('509).

Applicants are notified that the JP abstract is submitted for translation

Instant application is claiming a mask composition and method of treating the facial skin comprising:

1. Water insoluble substrate

Art Unit: 1615

2. *a. An oily component*

b. Hydrophilic surfactant.

c. A water-soluble thickening polymer

d. An aqueous carrier

EP '875 teaches cosmetic mask. See the abstract. Figure meets the limitation claimed in claim 8.

Pages 1-2 teach that the face packs are known. See page 5 wherein the facemask can be prepared using nonwoven fabric or textile fabric and the textile fabric is made from cotton or synthetic

resin. See also pages 6 for the description of the figure. Patent at page 7 clearly teaches that

liquid ingredients, which have been used in the face pack, can be used as liquid ingredients and

teaches that the liquid composition can have humectants, oily substance and other drugs. Patent

at page 7, last paragraph teaches that the period for pack treatment ranges from 5-7 minutes. The

difference between EP and instant application is EP does not teach face pack with liquid

composition claimed. However Patent '022 teaches cosmetic mask using surfactant, oily

components, and thickener. See the abstract, see col.2, lines 30-35, and see col.4, lines 10-25 for

the polymer, which is same to that claimed as ingredient 2c. See col.4, lines 30-40 for water, see

col.5, lines 45 et seq for silicone oils, which is claimed 2a. and see col.6, lines 19-20 for Sorbitan

fatty acid esters and these are nonionic surfactant belonging to 2b. See the examples wherein

patent teaches using vitamins, but not the vitamins claimed in claim 7 as whitening agent.

However JP abstract teaches beauty pack containing ascorbic acid (claimed whitening agent).

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to prepare cosmetic mask of EP with liquid compositions having humectant and oily component and also add surfactant and thickener taught by patent '022 and add vitamin

Art Unit: 1615

(ascorbic acid) taught by JP abstract. The idea of combining the ingredients flows logically from the art for having been used in the same cosmetic facemask art. One of ordinary skill in the art would be motivated to use liquid compositions having the ingredients taught by patent '022 and JP abstract with the reasonable expectation of success that the fabric face pack of '875 avoids the disadvantages taught by EP '875 for conventional face packs at pages 2-3 and has the advantage that the face pack can be dried quickly and it can be peeled off without leaving any flakes on the face and the addition of whitening agent (ascorbic acid) has the advantage of providing the consumer beauty effect taught by JP abstract. This is a prima facie case of obviousness.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-13 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-27 of copending Application No.

10/630,493. Although the conflicting claims are not identical, they are not patentably distinct

Art Unit: 1615

from each other because the instant application and co-pending application are claiming mask composition, and method of treating the facial skin using the mask composition. There is overlap with the ingredients, which are thickener, humectant, whitening agent. The expression “ comprising “ in the instant application is inclusive of skin toning agent claimed in the co-pending application and the expression “ comprising “ in the co-pending application is inclusive of oily component and surfactant claimed in the instant application. The substrate claimed is same in both the applications.

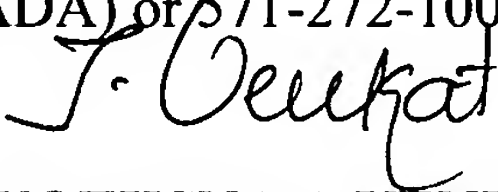
This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTHSNA A. VENKAT Ph. D whose telephone number is 571-272-0607. The examiner can normally be reached on Monday-Friday, 10:30-7:30:1st Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL WOODWARD can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1615

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


JYOTHSNA A VENKAT Ph. D
Primary Examiner
Art Unit 1615
